

Peter C. Hildreth
Bank Commissioner

Robert A. Fleury
Deputy Bank Commissioner

64B Old Suncook Road
Concord, NH 03301

Phone (603) 271-3561

Division FAX Numbers:
Banking (603) 271-1090
Consumer Credit
(603) 271-0750



The BANKING DEPARTMENT NEWSLETTER

Volume 1 - Issue 2

www.state.nh.us/banking

Note from the Commissioner

Welcome to the second issue of the Banking Department Newsletter. The response from the various regulated entities under the Department's purview has been very positive. One note I received summed up the need for the newsletter. The writer noted that, while he knew a lot of the information, he was not aware of the appointment.

As you can see from the "lead story" in this issue, the Department recently unveiled a photographic portrait of the late A. Roland Roberge, former Commissioner of Banking. The idea came about during a conversation with my assistant, Carolyn Bond. We agreed that there should be some recognition of Roland's years of service to the State of New Hampshire. The unveiling was intended to be an informal gathering, but, more than 65 people appeared at the Department. These ranged from current and former employees to representatives of numerous banks and credit unions, attorneys and friends. I was particularly gratified by the people who drove considerable distances to be with Roland's family and co-workers. It was certainly an indication of the respect and friendship they had for the former Commissioner. The picture now hangs in our lobby, just to the right of the receptionist's area.

We hope that many of you will opt to receive the Newsletter electronically. If you haven't already, please consider signing up for the online version. You will receive the newsletter faster and in a form that can easily be shared with others in your institution.

On behalf of all of the Department employees, I wish you all a happy holiday season and may the next year bring you happiness.



From left to right, Carolyn Bond, Senator Sheila Roberge and her daughter Carolyn.

Department Honors Commissioner Roberge

The department recently honored the late Commissioner A. Roland Roberge with the unveiling of a photograph which is on display in the department's lobby. The ceremony was attended by the commissioner's wife Sheila and children John and Carolyn. Also in attendance were Executive Councilor Peter Spaulding, many state and federal bank and credit union officials, friends and current and former staff members. Roland Roberge served as Bank Commissioner from January 1, 1977 until July 28, 2001. It is believed that he was the longest serving bank commissioner in the country.

Newsletter

Although the response has been good, the department would like to encourage more entities to receive the newsletter via email. Please email newsletter@banking.state.nh.us and put "Newsletter" in the subject line. The Newsletter is also available on the department web site.

The latest on the USA PATRIOT Act, OFAC, and BSA

On October 25, 2002, The Department of the Treasury (Department) released an interim final rule providing time for further study of certain industries to establish appropriate anti-money laundering programs, as required under section 352 of the USA PATRIOT Act. The interim rule is effective until Treasury completes its study of these industries and issues final rules applicable to them. The industries subject to further study and regulation include certain insurance companies; investment companies other than mutual funds; loan and finance companies; dealers in precious metals, stones, or jewels; commodity pool operators and commodity trading advisors; businesses engaged in vehicle sales; persons involved in real estate closings and settlements; pawnbrokers; travel agencies; telegraph companies; private bankers; state-chartered non-depository trust companies; non-federally insured credit unions; and private banks.

Section 352 of the PATRIOT Act originally required all financial institutions, as defined by the Bank Secrecy Act, to establish an anti-money laundering program within six months of the passage of the PATRIOT Act. In April, the Department issued regulations requiring a significant portion of the financial services sector to establish anti-money laundering programs and deferring application of the statute to the remaining categories for six months. The new regulation extends the deferral to allow the Department to complete its work and issue appropriate regulations. The Department determined that individual regulations applicable to each category of financial institution were necessary to provide adequate guidance to the diverse collection of industries affected, many of which have not previously been

subject to anti-money laundering regulation. For the identified financial institutions, compliance with section 352 is not required until the Department issues final regulations.

The Department will publish regulations called for by the PATRIOT Act within the next six months. This includes not only regulations required in section 352 of the Act, but also other provisions, such as section 326, which requires financial institutions to develop procedures for identifying and verifying the identity of accountholders.

Advanced Fee Schemes

Many institutions are now the recipients of solicitations for advanced fee schemes, which have commonly been referred to as Nigerian, West African or 419 advanced fee schemes. The institution receiving the solicitation should determine whether a Suspicious Activity Report (SAR) needs to be filed.

Financial institutions should be aware that the United States Secret Service (USSS) has dedicated resources to this issue. If a financial institution receives an "advanced fee scheme" letter through the mail, e-mail, or fax, and the institution has not initiated any contact with law enforcement or the perpetrators of the attempted fraud, the letter should be forwarded to USSS using one of the following methods.

- e-mail to: 419.fcd@uss.s.treas.gov
- fax to: (202) 406-5031; or
- mail to: United States Secret Service, Financial Crimes Division, 950 H Street, Suite 5300, NW, Washington, D.C., 20373-5802, (ATTN: 419)

However, if the financial institution has been victimized by of these schemes, all written documentation should be mailed to the USSS at the above address and a call should be placed to the agency at (202) 406-5850.

In response to this growing epidemic, USSS established "Operation 4-1-9" designed to target "advanced fee fraud schemes" on an international basis. The USSS' Financial Crimes Division receives approximately 100 telephone calls from victims/potential victims, and 300 to 500 pieces of related correspondence per day. Additional information concerning the USSS' efforts to combat this scheme can be found on the internet at

www.treas.gov/uss.s/financial_crimes.shtml#Nigerian.

Another point of reference is a report prepared by the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs entitled "Nigerian Advance Fee Fraud," which can be found at www.travel.state.gov.

Web Site

Check out the department web site. The site contains all the laws and rules for the entities we regulate. It also has forms available for downloading concerning licensing and consumer complaints as well as links to various sites of interest. A recent addition to the site is a FAQ page addressing consumer credit licensing questions. Check out the FAQ's at <http://webster.state.nh.us/banking/FAQs.pdf>.

BANKING DIVISION NEWS

Bulletin

The department publishes and distributes a Monthly Bulletin which contains the status of applications for new banks, credit unions, nondepository trust companies, bank/credit union mergers, nondepository bank change in control, new branches, ATM's, charter amendments and nonbank cash dispensing machine registrations. Beginning in January 2003, the bulletin will no longer be produced and distributed in hard copy. Notification will be included with the December bulletin indicating that it is available on the department's web site.

Bank Branches

Need assistance in determining statutory requirements for opening a new branch? Contact your state regulator for guidance. All banks and trust companies must comply with certain requirements of the branching laws (RSA 384-B). The department appreciates communication with the industry on these matters prior to receipt of filing. The amount of paper work depends greatly on a particular situation. So the best bet is to contact the department and we will guide you through the process.

"Other-Than-Temporary" Impairment Of Securities

Recent economic developments continue to exert downward pressure on bank investments. Not only are banks experiencing a decline in capital positions due to investment depreciation: if "other-than-temporary impairment" exists, banks are required to realize the associated losses in order to comply with Generally Accepted Accounting Principles.

Financial Accounting Standards (FAS) 115 dictates that if "other-than-temporary impairment" has occurred, amortized cost must be written down to fair (market) value; however, FAS 115 does not provide comprehensive guidance on determining "other-than-temporary" impairment. Additional guidance is provided in AICPA Auditing Interpretation No.20 and SEC Staff Accounting Bulletin Topic 5M (SEC 4940) - Noncurrent Marketable Equity Securities.

For individual securities classified as held-to-maturity or available-for-sale, a determination should be made whether a decline in fair value below amortized cost is "other-than-temporary". If the decline is "other-than-temporary", the security should be written down to fair value with the associated loss reflected in current earnings. The new value should not be changed for subsequent recoveries in fair value.

Although "other-than-temporary" is not defined in FAS 115, management should address this issue and consider all available evidence to determine if the decline is "other-than-temporary". While no fixed guidance is available, the following factors should be considered when determining "other-than-temporary" impairment:

- Duration and extent that market value has been less than cost (a significant decline of 6 months or more is a general benchmark);
- Financial condition and near-term prospects;
- If the extent of the decline is substantial (in excess of 20 percent of cost), then reasons for the decline should be assessed; and
- Ability and intent of the institution to hold the investment (sufficient time to recover lost value).

If realized losses from "other-than-temporary impairment" are determined to be material, financial institutions may be required to file amended regulatory reports for the effected periods. Frequent monitoring is necessary to ensure accurate and complete reporting. Financial institutions are strongly encouraged to contact their external auditors and/or legal counsel for consultation in this matter.

Credit Union Museum Has Opened

On October 18th, in the beautiful fall weather, the America's Credit Union Museum opened its doors. The Museum is located at 418/420 Notre Dame Avenue in Manchester New Hampshire. The location is important because this is the building that housed the first credit union in the nation, which was known as St. Mary's Cooperative Association and is now St. Mary's Bank. Given the heritage of the Manchester mill community, it is understandable why the Credit Union movement began right here in New Hampshire in 1907. Among the distinguished guests in attendance were Chairman Dennis Dollar of the NCUA, New Hampshire Credit Union League representatives and a number of management personnel from the state's 31 state and federal credit unions.

A walk through of the Museum affords everyone the opportunity to view memorabilia of the first credit union and the history of the credit union movement. All institutions should encourage their members to visit the Museum.

The Museum is open to the public and has a conference room that is available for use. Peggy Powell, the Museum's Executive Director, has asked that anyone interested in using the conference room call her at 629-1553. The Museum will be open to the public Monday, Wednesday, and Friday, 10:00 to 12:00 and 1:00 to 4:00.

CONSUMER CREDIT DIVISION NEWS

New Director of Consumer Credit

On November 1, 2002, Mary Jurta joined the New Hampshire Banking Department as Director of the Consumer Credit Division. Mary comes to the division after 15 years of supervising the licensing and examination functions of the Bureau of Securities Regulation. Prior to that, Mary worked in the mutual fund and financial reporting section of Chubb LifeAmerica. Mary has an undergraduate degree in accounting, is a certified public accountant and earned an MBA at New Hampshire College, now known as Southern New Hampshire University.

Annual Reports Are Due

Annual reports are due on or before February 1, 2003. If you held a 2002 First Mortgage license, a Second Mortgage license, a Small Loan Lender license or a Sales Finance license, you must report all lending activity for the period from January 1, 2002 to December 31, 2002. The required forms were furnished with the application packages mailed on October 1. Additional forms can be downloaded from the Department's web site. Fines accrue beginning February 2 at \$25 for each calendar day that the annual report is not received. Postmark dates are not used in the calculation of fines.

The information gathered from licensee annual reports is used in the off-site monitoring program as well as the annual report issued by the department.

Advertising Your Business

Do you advertise your business? If you do, then these are the laws you must follow.

- RSA 361-A:10-a for Sales of Motor Vehicles
- RSA 398-A:9 for Second Mortgage Home Loans
- RSA 399-A:22 for Small Loan Lenders
- RSA 397-A:14-a for First Mortgage Bankers & Brokers

These laws generally prohibit advertising terms that are "false, misleading, or deceptive." It should be noted that only First Mortgage Bankers & Brokers have to include their valid and existing license number in all advertising, regardless of media type. In addition, New Hampshire statutes require that you maintain copies of all advertising for examination purposes

The federal regulations that apply include Regulation Z, 12 C.F.R. 226.24, Advertising, which requires that if certain terms are advertised then other terms must also be disclosed. If you advertise a down-payment, number or period of payments, amount of payment, or amount of finance charge you must disclose the down-payment, terms of repayment, and the Annual Percentage Rate. Remember if you do advertise your First Mortgage Banker Broker business through any media ensure that your license number is displayed. The Department does review advertisements of all media for compliance with state and federal laws.

New Administrative Rule

The department pursuant to RSA 361-A has adopted a new administrative rule, BAN 1000. BAN 1000 governs the licensing requirements for sales finance companies and retail sellers. The new rule, available on our web site, sets out the requirements for license application, change of ownership and annual report filings. In addition, the rule details the disclosure requirements for the use of balloon payment loans. The rule became effective on October 30, 2002 and will remain in effect until October 30, 2010.

We encourage all sales finance and retail seller licensees to review the new rules and contact the Consumer Credit Division with any questions.

Application Status On-Line

Applicants who have applied for a license with the department can now check the status of the application by logging on to the department web-site. The applicant's Federal Tax Identification Number is required for access. The applicant can view the date the application was received by the department, the date it was reviewed, and any missing items that have been requested. This information is updated weekly.